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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,312	07/07/2003	W. John Gardenier	1442.041	8270
23405	7590	01/05/2007	EXAMINER	
HESLIN ROTHENBERG FARLEY & MESITI PC 5 COLUMBIA CIRCLE ALBANY, NY 12203			LE, HUYEN D	
			ART UNIT	PAPER NUMBER
			3751	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/05/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)
	10/614,312	GARDENIER, W. JOHN
	Examiner Huyen Le	Art Unit 3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 11/17/2006.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-9, 11, 23-27, 29-39, 41, 42 and 55-62 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-9, 11, 23-27, 29-39, 41, 42 and 55-62 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____
4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
5) Notice of Informal Patent Application
6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1- 8,11, 23-27, 29-38, 42, 56, 57, 59-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friend (3,641,996) in view of Burgess et al (4,211,216).

The Friend reference discloses a system for providing pressurized water to a set of water inlets 60,61 in a bathing enclosure comprising: a foot well position; a least one of a source of pressurized water 21; at least one manifold 22 having at least one inlet in fluid communication with the source of pressurized water 21 and a plurality of outlets in fluid communication with the set of water inlets 60,61; and a user-operable diverter 24a distinct from the manifold 22 configured to divert at least some of the pressurized water away from the water inlets and to the foot well.

Although the Friend reference does not teach a seat at an elevation, attention is directed to the Burgess et al reference which teaches a whirlpool comprising a seat 2 at an elevation.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a seat for a user in the Friend hydrotherapy

system in view of the teaching of the Burgess et al reference for providing more comfort to a user.

Regarding claim 2, the user-operable diverter 24a is positioned upstream of the manifold 52.

Regarding claim 3, the user-operable diverter 24a comprises a variable user-operable diverter.

Regarding claim 4, the set of water inlets 60 comprise a plurality of first water inlets having a first pressure drop to the flow of water therethrough, and wherein the bathing enclosure comprises at least one second water inlet 60 comprising a second pressure drop to the flow of water therethrough, wherein the user-operable diverter diverts at least some of the pressurized water to the at least one second water inlet 60 of the bathing enclosure wherein the second pressure drop is less than the first pressure drop because first water inlets 62 comprises a plurality of openings.

Regarding claims 5 and 31, although the Friend reference does not specifically disclose that the second pressure drop of the second water inlet is at least 50 percent less than the pressure drop across the first set of water inlets, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select pressure drop for the second inlet within a certain range to best fit a particular a water system for a bathing device and to optimize the performance. See *In re Aller*, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art.

Regarding claim 6, the system further comprises at least one conduit (an exiting pipe before the T-section connected to valve 24a) between the source of pressurized

water 21 and the manifold inlet 22, wherein the user-operable diverter 24a is in fluid communication with the conduit.

Regarding claim 7, the system further comprises at least one conduit 18 (or a pipe section where valves 63 and 64 are connected thereto) positioned between the manifold outlet 60 and the set of water inlets 62.

Regarding claim 8, the user-operable diverter 24a comprises a valve.

Regarding claim 11, the bathing enclosure comprises a tub.

Regarding claims 23-27, 29-34 and 60, the method for pressurizing water to a set of water inlets in a bathing enclosure would be inherently performed during the installation and normal use of the Friend modified system.

Regarding claim 35, the system includes a one single speed pump.

Regarding claim 36, the variable diverter 24a is a valve.

Regarding claim 40, the bathing enclosure comprises at least one foot well, wherein the user-operable diverter 38 diverts water to the one foot well.

Regarding claim 41, the set of water jets 62 is located in one seat surface 16.

Regarding claim 42, the bathing enclosure comprises a pool.

Regarding claim 55, the surface 16 comprises a plurality of portions joined by a connector therebetween, the plurality of portions 16 constitute a plurality of seats.

Regarding claim 56, the set of water inlets are positioned above the seat elevation (surface portion 16).

Regarding claim 57, the manifold 60 comprises a plenum into which the least one inlet discharges water and from which water is distributed to the plurality of outlets 60.

3. Claims 9 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friend (3,641,996) in view of Burgess et al (4,211,216) as described above and further in view of Ruderian (3,374,492)

Although the Friend reference shows only one pump, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide more than one pumps in the Friend system in view of the teaching of Ruderian reference to further enhance hydrotherapy effect in the tub.

4. Claims 1-9, 11, 23-27, 29-39, 41, 42, 55-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicollet (3,964,472) in view of Petersen (3,496,579) or Diamond (D 288,350).

The Nicollet reference discloses a system (Fig. 7) for providing pressurized water to a set of water inlets in a bathing enclosure comprising: at least one seat, a foot well; a least one of a source of pressurized water 42; at least one manifold 31 having at least one inlet in fluid communication with the source of pressurized water 21 and a plurality of outlets in fluid communication with the set of water inlets.

Although Nicollet does not disclose the seat being at an elevation above the foot well, attention directed to the Petersen reference which teaches a foot well 24 sunk below a seat 23 or 42 or a seat 23 or 42 at elevation above a foot well 24. In addition,

the Diamond reference teaches a bathtub having a seat at an elevation above the floor of the bathtub

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Nicollet tube with the seat at an elevation in view of the teachings of the Petersen or Diamond for providing a user with a seating position so that a user can easily get up from the tub.

Regarding claims 5 and 31, although the Friend reference does not specifically disclose that the second pressure drop of the second water inlet is at least 50 percent less than the pressure drop across the first set of water inlets, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select pressure drop for the second inlet within a certain range to best fit a particular a water system for a bathing device and to optimize the performance. See *In re Aller*, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art.

Regarding claims 23-27, 29-34 and 60, the method for pressurizing water to a set of water inlets in a bathing enclosure would be inherently performed during the installation and normal use of the Nicollet modified system.

5. Claims 9 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicollet (3,964,472) in view of Petersen (3,496,579) or Diamond (D 288,350) as described above and further in view of Ruderian (3,374,492)

Although the Nicollet reference shows only one pump, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide

more than one pumps in the Nicollet system in view of the teaching of Ruderian reference to further enhance hydrotherapy effect in the tub.

Response to Arguments

6. Applicant's arguments with respect to claims 1, 23, 30, 35 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Huyen Le

Application/Control Number: 10/614,312
Art Unit: 3751

Page 8

Thuyen Le
Primary Examiner
Art Unit 3751

HL